IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

COMPANY PETITION NO.201 OF 2007
CONNECTED WITH
COMPANY APPLICATION NO. 87 OF 2007

In the matter of Scheme of Arrangement between Forbes Gokak Ltd, Gokak Textiles Ltd., and their respective Shareholders and Creditors for the demerger of Textiles Division of Forbes Gokak Limited to Gokak Textiles Ltd.

Forbes Gokak Ltd. ... Petitioner.

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Mr. Harvinder Toor i/b. Prem Ranga for the Petitioner.
Mr. C.J. Joy for Regional Director.
Mrs. K.V. Gautam, Dy. O.L.
Mr. Vivek Salunke for Objector.

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CORAM : DR. D.Y.CHANDRACHUD,J.

04th May, 2007.

P.C. :

. The sanction of the Court is sought to a scheme of demerger, under Sections 391 to 394 of the Companies Act, 1956. The Scheme of demerger envisages that the Textile Division of the Transferor shall stand transferred to and vested in the Transferee. The Transferee is registered in the State of Karnataka and the sanction of this Court is hence sought subject to the approval of the scheme by the Karnataka High Court.

2. The Court has been informed that meetings were held of both the equity shareholders and the secured creditors at which the scheme has been approved. In puruance of the directions issued by this Court, individual notices were despatched to unsecured creditors of a value more than Rs.50,000/- Two objections have been received from unsecured creditors one of whom has filed a suit before the Civil Judge, Senior Division, Kolhapur (Civil Suit 38 of 2006) for the recovery of an amount of Rs.8.69 lakhs. Counsel appearing on behalf of the other unsecured creditor states that his client has a claim of Rs.9.4 lakhs. In so far as the unsecured creditors are concerned, the scheme envisages the continuation of all legal proceedings. Clauses 11.1 and 11.2 of the scheme read as follows :-

> **"11.1** Upon the Scheme becoming effective, all legal and other proceedings, including before any statutory or quasi-judicial authority

or tribunal of whatsoever nature by or against the Demerged Company pending and/or arising at the Appointed Date and relating to the Demerged Undertaking, shall be continued and enforced by or against the Resulting Company only, to the exclusion of the Demerged Company in the manner and to the same extent as would have been continued and enforced by or against the Demerged Company. On and from the Effective Date, the Resulting Company shall and may, if required, initiate any legal proceedings in relation to the Demerged Undertaking.

11.2 In the event that the legal proceedings referred to above, require the Demerged Company and the Resulting Company to be jointly treated a parties thereto, the Resulting Company shall be added as party to such proceedings and shall prosecute or defend such proceedings in cooperation

with the Demerged Company. In the event of any difference or difficulty in determining whether any specific legal or other proceeding relates to the Demerged Undertaking or not, the decision of the Board of Directors of the Demerged Company as to whether such proceeding relates to the Demerged Undertaking or not, shall be conclusive evidence of the relationship with Demerged Undertaking."

3. The aforesaid provisions would sufficiently protect the unsecured creditors. The Court is also informed that the net worth of the Transferor as on 30th September 2006 was to the tune to Rs.1.96 crores.

4. Both the Official Liquidator and the Regional Director have stated that the scheme as proposed is not contrary to the public interest or prejudicial to the interest of the shareholders or creditors.

5. There is no objection to the scheme and since all the requisite statutory compliances have been fulfilled, there is no reason why relief as prayed should not be granted. Subject to the scheme also being approved by the Karnataka High Court on a Petition to be filed by the Transferee, the Company Petition is made absolute in terms of prayer clauses (a) to (c).